reversing the decisions of trial courts on such technicalities as these. In the last number of the JOURNAL (pp. 818-819) we reviewed an address delivered before the State Bar Association of Alabama by Mr. C. B. Verner of the Tuscaloosa bar, in which this charge was made and the evidence produced in support thereof. "I have examined," says Mr. Verner, "about seventy-five murder cases that found their way to the Supreme Court and reported in random volumes 100 to 160 of the Alabama reports. More than half of these cases were reversed, and not a single one of them on any matter that went to the merits of the case; and very few of them upon any matter that could have influenced the jury in reaching a verdict." In the same address we are told that more homicides were committed last year in the single county of Jefferson, Ala., than were committed in all England, Scotland, Ireland and Wales combined, and that the men who committed these murders for the most part went unpunished largely because the courts failed to properly discharge their duties to society.

Yet we are told that the dissatisfaction with the administration of the criminal law is not well founded, and that the outpouring of criticism to which the system is being subjected is nothing but a "hue and cry" of uninformed laymen, who do not understand the situation. But the testimony of the lawyers themselves abundantly disproves this charge. J. W. G.

SIMPLIFICATION OF INDICTMENTS.

The first step in the simplification of judicial procedure should be the abolition of the existing method of framing indictments and the substitution of a simpler form more in keeping with modern business-like methods of framing legal instruments. The form now religiously followed in most of our states is essentially the same as that employed in England in the time of the Tudors, though strangely enough it has long ago been abandoned in the country where it originated. The excessive particularity commonly required in the allegation of a crime not only unnecessarily encumbers the records, but frequently results in gross miscarriages of justice. The practice of overloading indictments with verbose and antiquated phrases and meaningless circumlocution, alleging over and over again obvious facts, is not necessary to apprise the accused of the charge that he is to meet. Why, for example, should it be necessary in an indictment charging a man with the theft of a horse to state the color of the horse? For, if the color is specified, the fact must

be proven. Or why should it be necessary, in charging the accused with assault with a heavy stick, to describe the weight and dimensions of the stick, as has been insisted upon in the Supreme Court of California? Chief Justice Mayes, in a sensible paper before the State Bar Association of Mississippi last year, addressed himself to the need of modernizing our antiquated practice of framing indictments and of eliminating the grotesque and pedantic verbiage, which more often results in the subversion of justice than in the protection of innocent persons. He pertinently asks why an indictment which charges the defendant with murder is not sufficient without the necessity of stating that the offense was willfully, maliciously, unlawfully and feloniously done, when the offense charged is declared to be murder? How could the case of the accused be prejudiced by the omission of the sacrosanct phrase "then and there," or the word "did?" Yet Mr. Mayes cites cases in his own state in which reversals have been made for these very omissions.

Ex-Governor Thomas of Colorado, in an address before the Iowa Bar Association at its last annual meeting, hardly exaggerated the evil when he declared that "indictments which vary the breadth of a hair from the established formula in statement, punctuation, the use of a capital for a small letter, the omission of an article, upset the most carefully conducted trials, reverse verdicts of unquestioned integrity, cheat justice of its dues and defeat results fairly obtained through infinite labor and expense."

To a layman, such insistence upon wornout and useless forms seems as absurd as it would have seemed to Goldsmith's Chinese Traveler if he had been told that a certain murderer had escaped punishment because, in the course of the proceedings, the clerk of the court, in affixing the seal, had committed the error of moistening it with a sponge instead of following the time-honored and strictly legal method of licking it with his tongue. At bottom, the absurdity is as great in one case as in the other. It is impossible for a layman to understand why it should be necessary to state, for example, that the grand jurors have been duly empaneled, charged and sworn, that the weapon used to take the life of a man was a firearm of a certain make, that it was loaded with gunpowder and leaden balls, that it was had and held in the right hand of the defendant, that it was discharged and shot off against and upon the victim, and that by reason of the force of the gunpowder aforesaid the bullet did strike and penetrate his body upon his upper right side and produce a mortal wound of the depth of so many inches and the width of so many inches. Professor Lawson, in an article entitled "Tech-

nicalities in Procedure," published in the May, 1910, number of this JOURNAL, cites the following case in illustrating the absurd particularity sometimes insisted upon in formulating indictments: S was convicted of the murder of E. The Supreme Court reversed the conviction because the indictment was not properly drawn. It declared that on a certain day S "did feloniously, purposely and with malice aforethought, kill E by firing a Colt's revolver loaded with gunpowder and leaden balls, which he, S, then and there had and held in his hands." "We cannot see," said the hair-splitting tribunal, "that the pistol was shot at E; it may have been fired into the air or at a flock of birds. Nor can we see that E was hit; he may have been a feeble man who died of fright at the discharge of the pistol, for anything the indictment contains."

For the sake of comparison, we insert here the copy of an indictment for murder recently found in a middle western state (it is taken from one of the current Reporters, and is fairly typical of indictments found in most of our states), and following it we publish the same indictment as it would be drawn in England. It is as follows:

The state of —, W County—ss.: In the court of common pleas, W County, —, of the term of October, in the year of our Lord one thousand nine hundred and eight. The jurors of the grand jury of the County of W and state of —, then and there duly impaneled, sworn, and charged to inquire of and present all offenses whatever committed within the limits of said county, on their said oaths, in the name and by the authority of the state of —, do find and present that J. F. G., late of said county, on the sixth day of August, in the year of our Lord one thousand nine hundred and eight, at the County of W aforesaid, in and upon one P. S., alias F. M., then and there being, did unlawfully, purposely and of deliberate and premeditated malice make an assault, in a menacing manner, with intent, him, the said F. M., unlawfully, purposely, and of deliberate and premeditated malice, to kill and murder; and that the said J. G., a certain pistol then and there charged with gunpowder and leaden bullets, which said pistol he, the said J. F. G., then and there in his right hand had and held, the and there, unlawfully, purposely, and of deliberate and premeditated malice, did discharge and shoot off to, against and upon the said F. M., with the intent aforesaid, and that the said J. F. G., with the leaden bullets aforesaid, out of the pistol aforesaid, by the force of the gunpowder aforesaid, by the said J. F. G., then and there discharged and shot off as aforesaid, him, the said F. M., in and upon the upper right side of the back of him, the said F. M., then and there, unlawfully, purposely, and of deliberate and premeditated malice did strike, penetrate and wound, with the intent aforesaid, so as aforesaid discharged, and shot out of the pistol aforesaid, by the said J. F. G., in and upon the upper right side of the back of him, the said F. M., one mortal wound of the depth of four inches, and of the breadth of half an inch, of which mortal wound he, the said F. M., then and there died; and so the jurors aforesaid, upon their oaths and affirmations aforesaid, do say that the said J. F. G., him, the said F. M., in the manner

and by the means aforesaid, unlawfully, purposely, and of deliberate and premeditated malice, did kill and murder contrary to the statutes in such cases made and provided, and against the peace and dignity of the state of —.

In the above indictment the names of the defendant and his victim are each repeated nine times; the phrase "in and upon," four times; the phrase "then and there," five times; the phrase "unlawfully, purposely and with premeditated malice," five times, and the words "said" and "aforesaid," twenty-five times.

We are informed by Dean Lawson of Missouri that the same indictment in England would have read as follows:

"County of ————. The jurors of our Lord the King upon their oath present that J. F. G., on the sixth day of August, 1908, feloniously, willfully and of his malice aforethought, did kill and murder one F. M., against the peace of our Lord the King, his Crown and dignity."

We leave it to the candid, intelligent members of the bar to say which of these forms is most in accord with common sense and reason. If anything can be said in defense of the cumbersome, verbose, grotesque form of which the above is a typical example, we should be glad to hear it. J. W. G.

UNEQUAL JUSTICE.

We publish in this issue of the JOURNAL an article by a member of the Mississippi bar, who discusses in a remarkably frank and convincing manner the actual inequality in the administration of the criminal law as between the rich and the poor, the white man and the negro. The proposition of the writer that the equality of all before the law is little more than a legal fiction, and that in practice the poor and friendless defendant is at a great disadvantage under our system of legal procedure, as compared with the rich and influential classes, is difficult to refute. This inequality does not necessarily mean that the judges are unfair or that the verdicts of juries are always determined by their prejudices rather than upon the basis of evidence, though it is well known that in cases in which members of the negro race are involved, the latter proposition is far less true than in cases in which white men alone are concerned. Much of the inequality is due to a system of procedure which often permits long delays, frequent appeals and new trials, the benefits of which the poor are unable to avail on account of the expense involved. The advantage which such a system gives the well-to-do litigant who can employ shrewd and skilled lawyers, who are frequently able to secure new trials for their clients upon technicalities